

**Service Employees International Union, Local 254,  
AFL-CIO, CLC (Janitronic, Inc.) and Bedford  
Building Associates. Case 1-CC-1988**

31 July 1984

**DECISION AND ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND DENNIS**

On 29 December 1983 Administrative Law Judge Thomas E. Bracken issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Service Employees International Union, Local 254, AFL-CIO, CLC, Boston, Massachusetts, its officers, agents, and representatives, shall take the action set forth in the Order.

**DECISION**

**STATEMENT OF THE CASE**

THOMAS E. BRACKEN, Administrative Law Judge. This case was tried at Boston, Massachusetts, on August 3, 1983. The charge was filed by Bedford Building Associates (Bedford) on May 26, 1983,<sup>1</sup> amended June 1, and the complaint was issued on June 20. It alleges that Service Employees International Union, Local 254, AFL-CIO, CLC (Respondent or the Union), in support of a labor dispute with Janitronic, Inc.<sup>2</sup> established and maintained a picket line at a building located at 99 Bedford Street in Boston (the Bedford Building), owned and operated by Bedford Building Associates (Bedford), at times when employees of Janitronic were not present at the Bedford Building; that such conduct induced and encouraged employees of Bedford and other persons engaged in commerce or an industry affecting commerce to cease work in the course of their employment, and threatened, restrained, and coerced such persons, with an object of forcing or requiring Bedford and others to cease doing business with Janitronic, in violation of Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act. The Respondent's answer was duly filed on June 28, amended at the hearing, and denies the commission of the alleged unfair labor practices.

<sup>1</sup> All dates are in 1983 unless otherwise stated.

<sup>2</sup> Referred to in the record as "Janitronics."

On the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the oral argument of the General Counsel, and the brief filed by the Union, I make the following

**FINDINGS OF FACT**

**I. JURISDICTION**

Bedford, a limited partnership, is engaged at the Bedford Building in the business of development, ownership, and operation of rental property, and it annually receives goods, building materials, and related products valued in excess of \$50,000 from points located outside the Commonwealth of Massachusetts.

Janitronic, a Massachusetts corporation, with its principal office and place of business in Waltham, Massachusetts, is engaged there and elsewhere in the cleaning and maintenance of offices and commercial buildings, and annually receives goods valued in excess of \$50,000 from points located outside the Commonwealth of Massachusetts, and has performed services valued in excess of \$50,000 for persons engaged in interstate commerce.

The Union admits, and I find, that Bedford and Janitronic are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

**II. THE LABOR ORGANIZATION INVOLVED**

The Union is a labor organization within the meaning of Section 2(5) of the Act.

**III. THE FACTS<sup>3</sup>**

Donald Coleman, business agent of the Union, testified without contradiction that the Union has had a wage dispute with Janitronic, a nonunion cleaning company, since at least August 1982.<sup>4</sup> Coleman admitted that the Union thereafter picketed at several buildings where Janitronic was engaged in janitorial work.

In the latter part of April, Henry Rossi was the project manager for Bedford on the renovation of the Bedford Building. In the course of his duties, and on behalf of Bedford, Rossi engaged Janitronic to perform janitorial services at the Bedford Building, which was in the final stages of renovation, and was partially occupied by tenants. During the period involved herein, employees of various contractors, such as masons, painters, and others performing construction work, as well as employees of Bay Management Group, Inc.,<sup>5</sup> were at work at the Bedford Building. Janitronic's employees were instructed to work between 5 and 8:30 p.m., and did so during the times material to this proceeding. Employees of Janitronic commenced working on May 2.

On May 20, Union Business Agent Coleman telephoned Rossi to find out if Janitronic was working at the

<sup>3</sup> The facts are not in essential dispute and are based on a composite of the testimony and documentary evidence.

<sup>4</sup> By letter dated August 26, 1982, the Union, over Coleman's signature, had advised Janitronic that it believed that the employees of Janitronic did not receive wages and benefits commensurate with prevailing union standards and that it was "in violation of union area standards." (R. Exh. 1.) No response is shown to this letter.

<sup>5</sup> Bay Management Group, Inc. was an agent of Bedford.

Bedford Building. Rossi acknowledged that Janitronic had been engaged to do work at the building. During this conversation and during a subsequent telephone conversation with Rossi and Harry Standel, Rossi's superior, on May 23, Coleman stated that the Union had a labor dispute with Janitronic and that, unless Bedford dismissed Janitronic, the union would picket the Bedford Building.<sup>6</sup> Coleman also mentioned the names of two union contractors who could do the work.

Beginning on May 26, and until enjoined by the U.S. District Court for the District of Massachusetts on July 19, the Union picketed the Bedford Building, with picket signs reading: "Janitronics, Inc. does not comply with area standards with regard to wages and benefits. Local 254." The Union also distributed leaflets which read, over the Union's name, as follows:

**NOTICE  
JANITRONICS, INC.,  
IS UNDERMINING LABOR  
STANDARDS AT THIS  
BUILDING**

Janitronics, Inc., is not a signatory to the Local 254 Master Janitorial Agreement.

Janitronics, Inc., does not contribute to industry Health and Welfare Pension Plan for employees.

Janitronics employees do not receive wages and fringe benefits commensurate with prevailing Union standards.

Janitronics does not employ Union employees

**SERVICE EMPLOYEES INTERNATIONAL  
UNION  
LOCAL 254, AFL-CIO, CLC**

The Union was notified in writing on May 26 by Bay Management Group, Inc. that "employees of Janitronic are only at this location between the hours of 5 p.m. and 9 p.m." (G.C. Exh. 3.) Despite this formal notice, the Union continued to picket the Bedford Building intermittently during business office hours when Janitronic employees were not present, but employees of other employers were present.

On five or six occasions during the picketing, Donald Brecher, the president of Janitronic, came on the premises of the Bedford Building prior to 5 p.m. to talk with Rossi. On these occasions Brecher would submit bills for work done by Janitronic and inquire as to whether the work performed was satisfactory. On occasions, Rossi would permit Brecher to use the telephone. Brecher brought no supplies into the building and did not work in the building on those visits.

<sup>6</sup> There was some discrepancy in detail between the testimony of Rossi and Coleman as to these conversations, but finally during cross-examination, Coleman admitted that he told Rossi and Standel that Coleman wanted them to know the Union would picket in front of the building so long as Janitronic was working there and that, if Bedford "got rid of" Janitronic, the picketing would cease.

#### IV. ANALYSIS AND CONCLUSIONS

Respondent contends in its brief that it was engaging in area standards picketing that was constitutionally protected. However, to engage in legal area standards picketing a union must do more than merely write a letter to an employer and ask for its wage rates and schedule of benefits. As stated in *Teamsters Local 296 (Alpha Beta Acme Markets)*, 205 NLRB 462 (1963):

Area picketing standards can only be justified where, in fact, the picketed employer's mode of operation can be shown to be substandard in comparison with the negotiated area standards. This necessarily means that there must have been an investigation and an evaluation of comparative standards carried out with as great a degree of thoroughness as the circumstances will permit.

In the instant case these requirements have clearly not been met by Local 254. There was no investigation by the Union as to the wages paid by Janitronic. Its letter of inquiry was sent 9 months before it commenced picketing the Bedford Building. This letter in turn was, at best, merely based on conversations that Coleman had with undisclosed Janitronic employees and undisclosed contractors at some unknown time. I, therefore, find no merit in Respondent's claim that it was engaging in area standards picketing. *NLRB v. Electrical Workers IBEW Local 265 R P & M Electric*, 604 F.2d 1091 (8th Cir. 1979).

In general, a labor union may picket an employer with whom the union has a labor dispute (the "primary employer") anywhere the primary employer may be found engaged in its normal business, so long as the union does not engage in conduct enmeshing or evidencing an intent to enmesh a neutral employer (the "secondary employer") in its dispute with the primary employer. But when, in an effort to compel the secondary employer to cease doing business with the primary employer, the union pickets the premises of a neutral secondary employer, encouraging and inducing the employees at work on those premises to cease work, at times when the primary employer is not engaged in its normal work on those premises, the union thereby enmeshes the neutral secondary employer (or employers) in its dispute, in violation of the Act. See, e.g., *Electrical Workers IBEW Local 3 (Hylan Electric)*, 204 NLRB 193 (1977).

It is admitted in this matter that though notified that Janitronic, with whom it had a dispute, was not present before 5 p.m. at the premises of Bedford (with whom the Union had no dispute), the Union persisted in picketing Bedford's premises when Janitronic was not present.<sup>7</sup>

<sup>7</sup> The Union suggests that its actions were justified by the occasional and apparently brief visits of the president of Janitronic Brecher to Bedford's premises while the picketing was in progress. However, these visits were only for the purpose of submitting bills for services rendered and, incidentally, to inquire if the work was being performed satisfactorily. I find that these activities did not constitute the "normal business" of Janitronic on Bedford's premises and did not justify the Union's conduct. This is not altered because Brecher occasionally made telephone calls while there.

Thus, there can be no question that the Union's picketing at the Bedford Building, when the employees of Janitronic, the primary employer, were not at the building to perform their normal janitorial service, supports the inference that the picketing was calculated to induce and encourage employees of Bedford Building to withhold services from their employer, and to coerce and restrain Bedford Building in order to force Bedford Building to refrain from doing business with Janitronic. Clearly, picketing of this nature under settled law violates Section 8(b)(4)(i) and (ii)(B) of the Act, whether or not it was effective to accomplish its objectives. *Broadcast Employees Local 31 (CBS, Inc.)*, 237 NLRB 1370, 1379 (1978); *NLRB v. Musicians Local 802*, 221 F.2d 900, 904-905 (2d Cir. 1955), enf. 110 NLRB 2166 (1954).

Further evidencing the Union's intent to enmesh Bedford in the Union's dispute with Janitronic is the Union's threat to Bedford to picket Bedford's building unless Bedford ceased doing business with Janitronic and the Union's suggestion that other union employers were available to do the work.

On the basis of the above and the record as a whole, it is found that the Union, Respondent herein, engaged in conduct in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

#### CONCLUSIONS OF LAW

1. Bedford Building Associates and Janitronic, Inc. are each engaged in commerce and in an industry affecting commerce within the meaning of Section 2(6) and (7) and Section 8(b)(4) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening to picket Bedford's premises to force and require Bedford to cease doing business with Janitronic and by picketing and encouraging and inducing employees working on the premises of Bedford to cease work in the course of their employment, at times when Janitronic was not engaged in its normal business at Bedford's premises for the object aforesaid, the Union has engaged in unfair labor practices in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of the Act.

#### THE REMEDY

It having been found that the Union, Respondent herein, has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and take certain action designed to effectuate the purposes of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>8</sup>

<sup>8</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the

#### ORDER

The Respondent, Service Employees International Union, Local 254, AFL-CIO, CLC, Boston, Massachusetts, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Inducing or encouraging, by picketing, or any other means, any individual employed by a person engaged in commerce, or in an industry affecting commerce, to engage in a strike or a refusal in the course of his (or her) employment to perform services, where an object thereof is to force or require Bedford Building Associates, or any other person, to cease doing business with Janitronic, Inc.

(b) Restraining or coercing Bedford Building Associates, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Bedford Building Associates, or any other person to cease doing business with Janitronic, Inc.

2. Take the following affirmative action which is necessary to effectuate the purposes of the Act.

(a) Post at its business offices and meeting halls copies of the attached notice marked "Appendix."<sup>9</sup> Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to Respondent's members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Board and all objections to them shall be deemed waived for all purposes.

<sup>9</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

##### NOTICE TO MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT induce or encourage, by picketing, or any other means, any individuals employed by persons subject to the National Labor Relations Act to engage in a strike or refusal in the course of their employment to perform services, where an object thereof is to force or require Bedford Building Associates, or any other person, to cease doing business with Janitronic, Inc.

WE WILL NOT restrain or coerce Bedford Building Associates, or any other person subject to the National Labor Relations Act, where an object thereof is to force

or require Bedford Building Associates, or any other person, to cease doing business with Janitronic, Inc.

SERVICE EMPLOYEES INTERNATIONAL  
UNION, LOCAL 254, AFL-CIO, CLC